IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 4561 of 2006
With
FIRST APPEAL No. 4613 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the Civil Judge?

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PRAHLADBHAI KASHIDAS PATEL - Appellant(s)
Versus
AHMEDABAD MUNICIPAL CORPORATION - Defendant(s)

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Appearance :
MR DR BHATT for Appellant(s) : 1, 1.2.1, 1.2.2, 1.2.3,1.2.4
None for Defendant(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 12/04/2007

ORAL JUDGMENT

As common question of facts arise in both the petitions they are being disposed of by this

common judgment.

2. First Appeal No. 4561 of 2006 is filed by the original – plaintiff challenging the judgment and decree passed by the learned City Civil Judge, Fast Track Court No.4, Ahmedabad in Civil Suit No. 4266 of 2000 decided on 20.02.2006, whereby the learned Trial Court has dismissed the suit filed by the plaintiff.

First Appeal No. 4613 of 2006 is filed by the appellants – original plaintiffs challenging the judgment and decree passed by the learned City Civil Judge, Fast Track Court No.4, Ahmedabad in Civil Suit No. 4265 of 2005 decided on 20.02.2006, whereby the learned trial Court has dismissed the suit filed by the appellants with costs.

3. In both the suits, respective appellants-original plaintiffs have prayed for declaration and injunction that the notice dated 21.05.1999 issued by the respondent – Ahmedabad Municipal Corporation is illegal and the respective- defendants are not entitled to transfer or alienate the suit land i.e. Final Plot No. 32 and Final Plot No. 297 of Naroda T.P.Scheme No.1.

4. It was the case on behalf of the respective appellants that the lands in question were given on rent to the respective plaintiffs by the erstwhile Naroda Nagar Panchayat for education purpose for Re.1 per year. It was the case on behalf of the plaintiffs

that though the suit land was in their possession, the defendants tried to interfere with the possession of the plaintiff and had made construction over the suit land and tried to snatch away the possession of the suit land from the plaintiffs. Therefore, aforesaid suits came to be filed for aforesaid reliefs.

5. Both the suits were opposed by the defendant- Ahmedabad Municipal Corporation by submitting that the lands in question are allotted Final Plot Nos. 32 and 297 under the finalized Town Planning Scheme No. 1, Naroda and the respective plots are reserved for education and play ground purpose and once the Town Planning Scheme has become final, the plaintiffs have no right to continue in the suit lands and/or all rights are extinguished. It is also submitted that the Town Planning Scheme which has become final, has not been challenged. Therefore, it has requested to dismiss the suits.

6. The learned Trial Court framed the issues at Exh. 25. The plaintiff examined one Shri Trambaklal Shivlal Sheth in the form of affidavit *vide* Exh. 30. and also examined one Shri Rameshram Joitaram Chowdhury *vide* Exh. 33. The plaintiffs have produced documentary evidence at Exh. 43 to 58. On behalf of the defendants, Town Planning Scheme was produced at Exh. 62. After considering the rival submissions and considering the fact that Town Planning Scheme has become final under which the plots in question are

reserved for education and play ground and the scheme has become final, the learned Trial Court dismissed both the suits. Being aggrieved and dissatisfied with the same, the appellants – original plaintiffs have preferred the present First Appeals.

7. Record and Proceedings was called for by this Court. Learned Advocate appearing on behalf of the appellants has fairly conceded that the Town Planning Scheme has become final and the same has not been challenged. Under the circumstances, when the Town Planning Scheme has become final it has become part of the Act. All the rights on the lands in question are required to be considered as per the Final Plots under the Town Planning Scheme. Whatever rights are there, they are extinguished on implementation of the Town Planning Scheme which has become final. When the Town Planning Scheme has become final and the same has not been challenged, the plaintiffs have no right whatsoever on the lands in question and the lands in question are required to be used for the purpose for which it is reserved i.e School and Play Ground. Mr. Chhaya, learned Advocate appearing on behalf of the Ahmedabad Municipal Corporation has submitted that as such the Corporation has already taken over the possession of the two Final Plots and in one Final Plot some portion of the land has been constructed for pumping station. Learned Advocate appearing on behalf of the appellants has also conceded that as such possession has already taken over by the Corporation on paper.

It is the case on behalf of the Corporation that even physical possession of the land is with the Corporation. When the lands are reserved for particular purpose in the present case for education and play ground under the Town Planning Scheme, the Corporation is required to use it only for the said purpose i.e. Education and Play Ground and that too within a reasonable time. Under the circumstances while dismissing the present First Appeals and confirming the judgment and decree passed by the Trial Court, it is observed that the Corporation shall use the Final Plots in question for the purpose for which it is reserved i.e. Education and play ground as early as possible but not later than 3 (three) months from today, more particularly, when the Town Planning Scheme No. 1, Naroda has been sanctioned long time somewhere in 1989. If the lands or the Final Plots which are reserved for specific purpose under the Town Planning Scheme are not put to use for the purpose for which it is reserved within a reasonable time, in that case, the entire purpose of reserving the land under the Town Planning Scheme would be frustrated.

8. For the reasons stated above, both the First Appeals are dismissed with above observations. Office is directed to sent writ of this order to the respondent immediately.

[M.R.Shah, J.]

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